

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

STEPHEN MARX, individually
and for others similarly situated,

Plaintiff,

v.

Civ. No. 21-0390 KG/DLM

CONCHO RESOURCES, INC., *et al.*,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION
FOR LEAVE TO FILE A SURREPLY TO RUSCO'S REPLY

THIS MATTER is before the Court on Plaintiff's Motion for Leave to File a Surreply to RUSCO's Reply (Doc. 69), filed September 30, 2022.¹ Plaintiff claims new materials were raised for the first time in RUSCO's Reply. (Doc. 69). The Motion for Leave was opposed by Defendant RUSCO; however, no response was filed.

A surreply may be appropriate when new matters are raised, for the first time, in a reply brief. *See Smith v. State Farm Ins. Cos.*, No. 08CV105 MCA/LCS, 2008 WL 11322946, at *7 (D.N.M. Sept. 24, 2008). According to the Tenth Circuit, a "nonmoving party should be given an opportunity to respond to new material raised for the first time in the movant's reply." *Locke v. Grady County*, 437 Fed. Appx. 626, 633 (10th Cir. 2011) (citing *Green v. New Mexico*, 420 F.3d 1189, 1197 (10th Cir. 2005)). New materials include new evidence and new legal arguments. *Id.*

¹ At the time of filing, the named plaintiff was Samuel Corral. (Doc. 69). Samuel Corral is no longer a party in this lawsuit, so the named Plaintiff has been updated to Stephen Marx. (Doc. 96).

Plaintiff has adequately identified new materials raised for the first time in RUSCO's Reply. (Doc. 69). These new materials include new legal arguments in RUSCO's Reply (Doc. 65) and new evidence offered via Concho's Notice of Non-Opposition (Doc. 64). Having reviewed the arguments presented, the Court will consider Plaintiff's Surreply (Doc. 75) in ruling on RUSCO's Motion to Compel Arbitration (Doc. 60). The Court hereby GRANTS Plaintiff's Motion for Leave (Doc. 69).

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE